

ENACTMENT: ADOPT LOCAL LAW INTRODUCTORY NO. 11 – 2021,
AMENDING THE CODE OF THE TOWN OF HUNTINGTON SO AS TO ADD
CHAPTER 194 (WIRELESS TELECOMMUNICATIONS FACILITIES)

Resolution for Town Board Meeting dated: April 13, 2021

The following resolution was offered by: **SUPERVISOR LUPINACCI**

and seconded by: **COUNCILMAN CUTHBERTSON**

WHEREAS, the Board is aware of recent orders of the Federal Communications Commission (FCC) governing the installation of telecommunication facilities in the rights-of-way and of provisions affecting local regulatory authority; and

WHEREAS, in addition, the development of new technologies requires the modification of the Code; and

WHEREAS, it is the intention of the Town Board to exercise its legislative and administrative authority to regulate wireless telecommunication facilities to the maximum extent permitted by law; and

WHEREAS, the Board seeks to ensure the rational siting of wireless facilities within the Town, the protection of the aesthetic quality of our neighborhoods and open spaces, the proper operation and control of the Town's rights of ways and other places, the protection of the health, safety and welfare of our residents, and the Town's compliance with federal and state mandates; and

WHEREAS, this action does not meet the criteria of any Type I or Type II actions in accordance with SEQRA, 6 NYCRR Parts 617.4 & 617.5, and therefore it is classified as an Unlisted action; and

WHEREAS, the Town Board, 100 Main Street, Huntington, NY 11743 is the Lead Agency as it is the only agency authorized to amend the Huntington Town Code;

NOW THEREFORE BE IT

RESOLVED, that the Town Board hereby adopts the Environmental Assessment Form prepared by the Department of Planning and Environment and issues a Negative Declaration in accordance with Article 8 of the Environmental Conservation Law on the proposed Town Code amendment, and additional information concerning the SEQRA process can be obtained from the Department of Planning and Environment, 100 Main St., Room 212, Huntington, NY 11743, phone: (631) 351-3196, e-mail: planning@huntingtonny.gov; and

BE IT FURTHER RESOLVED

THE TOWN BOARD, having held a public hearing on the 16th day of March, 2021 at 2:00 p.m. to consider adopting Local Law Introductory No. 11 - 2021, amending the Code of the Town of Huntington so as to add Chapter 194 (Wireless Telecommunications Facilities), and due deliberation having been had,

HEREBY ADOPTS

Local Law Introductory No. 11 -2021, amending the Code of the Town of Huntington so as to add Chapter 194 (Wireless Telecommunications Facilities), as follows:

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HUNTINGTON, AS FOLLOWS:

LOCAL LAW NO. 15- 2021
AMENDING THE CODE OF THE TOWN OF HUNTINGTON
SO AS TO ADD CHAPTER 194
(WIRELESS TELECOMMUNICATIONS FACILITIES)

Section 1. Amendment to the Code of the Town of Huntington so as to add Chapter 194 (Wireless Telecommunications Facilities); as follows:

CHAPTER 194
WIRELESS TELECOMMUNICATIONS FACILITIES

ARTICLE I
GENERAL PROVISIONS

§194-1. Legislative intent. Wireless Telecommunications Facility Applications include a variety of application types that can be reviewed by several different Boards of the Town of Huntington. The Huntington Town Board has determined that it is in the best interests of town residents to establish standards for the location of Wireless Telecommunication Facilities and the provision of communication services consistent with applicable federal and state laws, statutes, rules and regulations in order to:

A. Protect the health, safety and welfare of the residents of the Town.

B. Assure access of our residents to wireless telecommunications technologies while at the same time protecting natural features, aesthetics, and the residential character of neighborhoods and areas surrounding educational, environmentally sensitive, historic and other unique or Sensitive facilities within the Town, and protect the efficient and orderly development of land uses from potential adverse impacts.

C. Promote and encourage the location of these devices in nonresidential areas of the Town and public lands.

- D. Minimize the total number of such devices constructed throughout the Town within legal limits.
- E. Promote and encourage joint use of such new and existing structures and discourage the erection of such structures for single users.
- F. Promote and encourage the location of such devices, to the extent possible, in areas where adverse impacts on the surrounding neighborhoods are minimized.
- G. Promote and encourage the configuration of such devices in a manner that minimizes adverse visual and aesthetic impacts through careful design, siting, landscape screening, and innovative camouflaging techniques.
- H. Promote the ability of service providers to supply such services as effectively and efficiently as possible.
- I. Prohibit potential damage to adjacent and/or nearby properties from collapse or failure of such devices through adequate engineering and siting requirements.
- J. Verify that proposed Wireless Telecommunication Facilities and other facilities subject to this legislation comply with federally established limits for RF (radiofrequency) emissions.
- K. Require Applicants to prepare RF propagation studies and produce such other proof as is reasonably necessary to establish that the proposed facility is necessary to remedy a Gap in Service, Densification of a wireless network, introducing new services or otherwise improving service capabilities at a specified location.
- L. Ensure meaningful input by the community into important land use decisions.
- M. Minimize intrusions on pedestrian and vehicular travel and safety on roads, streets and sidewalks.
- N. These regulations are not intended to prohibit or have the effect of prohibiting the provision of adequate Wireless Telecommunications Facilities.

§194-2. Definitions and word usage. The following terms shall have the meanings indicated.

ANTENNA - A system of electrical conductors designed for the purpose of emitting or receiving electromagnetic waves or radio frequency or other wireless signals from a fixed location.

ANTENNA ARRAY - An Antenna Array (or Array Antenna) is a set of multiple connected Antennas which work together as a single Antenna, to transmit or receive radio waves.

APPLICANT – The Person submitting an Application for a Wireless Telecommunications Facility.

APPLICATION - All necessary and appropriate information and data submitted by an Applicant that is necessary in order to receive approval for Wireless Telecommunications Facilities from the Board or Department having jurisdiction.

COLLOCATION - The use of an existing Telecommunications Wireless Facility or location by more than one Telecommunications provider, which includes sharing an Antenna, Tower, or mounting location, and which may include Modifications to the existing facility for the purpose of mounting or installing new Antennas.

COMMERCIAL IMPRACTIBILITY OR COMMERCIALLY IMPRACTICABLE - The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “Commercially Impracticable” and shall not render an act or the terms of an agreement “Commercially Impracticable”.

CONSULTANT – An individual or entity consisting of qualified professionals retained by the Town at the Applicant’s expense to verify that the proposed Wireless Telecommunication Facility subject to this Chapter complies with the applicable limits for RF emissions, that the proposed facility is necessary to remedy a Gap in Service or Densification at a specified location, and to advise the Town on any technical aspect of the Application including conducting a physical inspection of the site or facility

CONSULTANT ESCROW – An escrow account established pursuant to §194-42(F), 194-44(F), 194-45(G), 194-49(D), or 194-50(A) of this Chapter funded by an Applicant and used to pay the fees of a Consultant.

DENSIFICATION – The establishment by the Applicant of sufficient Wireless Telecommunications capacity to not only provide basic area coverage but to also meet all reasonably foreseeable demand for communications and data in the service area.

DIRECTOR – The Director of the Department of Planning and Environment or their designee.

DISTRIBUTED ANTENNA SYSTEM (DAS) - A network of spatially separated Antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

ELIGIBLE FACILITY REQUEST – Any request for the Modification of an existing Tower or base station that does not Substantially Change the physical dimensions of such Tower or base station, involving:

- (1) The Collocation of new Transmission Equipment; or
- (2) The removal of Transmission Equipment; or
- (3) The replacement of Transmission Equipment.

FAA – The Federal Aviation Administration of the United States or successor agency.

FCC – The Federal Communications Commission of the United States or successor agency.

GAP IN SERVICE - A Gap in Service exists where a remote user of services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage Gap exists customers cannot receive and send signals, and when customers pass through a coverage Gap their calls are disconnected.

HAMLET CENTER – An area mapped and identified as a Hamlet Center in the Horizons 2020 Comprehensive Plan or successor plan.

HEIGHT – The distance measured from the lowest point to the highest point on the Tower or other structure, including the highest point of the mount, Antenna, or any lightning protection device attached to the Tower or structure. Changes in Height should be measured from the original support structures in cases where deployments are or will be separated horizontally, such as on the rooftops of buildings; in other circumstances, changes in Height should be measured from the dimensions of the Tower or base station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act.

MODIFICATION OR MODIFY – The addition, removal, replacement, or change of any of the physical and visually discernable components or aspects of a Wireless Telecommunication Facility, such as Antennas, cabling, equipment shelters, equipment cabinets, generators, utility feeds, Tower Height and mounting Heights, or changing the color or materials of any visually discernable components. Adding a new wireless carrier or service provider to a Wireless Telecommunications Facility as a Collocation is a Modification.

MUNICIPAL FACILITIES – Town-owned streetlamps, light poles, lighting fixtures, electroliers, flagpoles, and other similar town-owned structures, excluding such facilities in the Public Rights-of-Way.

MUNICIPAL PROPERTY – Town-owned buildings, and the space in, upon, above, under, along, across, and over real property that is under the sole ownership, jurisdiction, possession and control of the Town, except property licensed to the Town, any property

where the Town holds an easement or other beneficial interest, Public Rights-of-Ways, and underwater lands.

PERSON - Any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more Persons having a joint common interest, or any other business entity.

PERSONAL TELECOMMUNICATIONS SERVICE (PCS) or PERSONAL WIRELESS SERVICES (PWS) – These terms shall have the same meaning as defined and used in the 1996 Telecommunications Act or successor law.

PUBLIC RIGHTS-OF-WAY – The space in, upon, above, under, along, across and over the public streets, roads, highways, lanes, courts, ways, alleys, sidewalks, and similar places, that are under the jurisdiction and exclusive control of the Town together with public utility easements and public service easements. The term shall not include county, state, or federal rights-of-way or places owned by the Town jointly with another Person, entity or agency.

SENSITIVE LOCATIONS – Locations within and adjacent to historic districts and individual historic landmarks, and within 500 feet of the boundary lines of a public or private school and day care centers.

SITE – For the purpose of determining whether an excavation or deployment is within or outside of a proposed Site and is therefore a Substantial Change, the term Site shall include Towers other than Towers in the Public Rights-of-Way, the current boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other Transmission Equipment already deployed on the ground. The current boundaries of a Site are the boundaries that existed as of the date that the original support structure or a Modification to that structure was last reviewed and approved by the Town, if the approval of the Modification occurred prior to the Spectrum Act [Eff. February 22, 2012] or otherwise outside of the Section 6409 (a) process.

STEALTH OR CONCEALMENT TECHNOLOGY – The minimization of potential adverse aesthetic and visual impacts from the installation of Wireless Telecommunications Facilities as directed in this Chapter.

SUBSTANTIAL CHANGE – A Modification Substantially Changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) For Towers other than Towers in the Public Rights-Of-Way, it increases the Height of the Tower by more than 10% or by the Height of one additional Antenna Array with separation from the nearest existing Antenna not to exceed twenty feet, whichever is greater; for other eligible support structures,

it increases the Height of the structure by more than 10% or more than ten feet, whichever is greater;

- (2) For Towers other than Towers in the Public Rights-Of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;
- (3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for Towers in the Public Rights-Of-Way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in Height or overall volume than any other ground cabinets associated with the structure. A generator shall be considered the equivalent of two (2) new equipment boxes;
- (4) It entails any excavation or deployment outside of the current Site, except that, for Towers other than Towers in the Public Rights-Of-Way, it entails any excavation or deployment of Transmission Equipment outside of the current Site by more than 30 feet in any direction. The Site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the Site;
- (5) It would defeat the Concealment elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or Modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

TELECOMMUNICATIONS - The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TOWER - Any structure built for the sole or primary purpose of supporting any FCC authorized Antennas and their associated facilities, including structures that are constructed for Wireless Telecommunications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed Wireless Telecommunications Facilities and fixed services, and the associated site. A Tower shall include the structure and any support systems appurtenant thereto. Any pole, mast,

mount, or other structure, and all attached equipment, including Antennas, exceeding 50 feet in Height above ground level shall be considered a Tower.

TOWN – The Town of Huntington, Huntington Board of Trustees, and any subdivision thereof, including Town-operated special improvement districts and agencies, including the Dix Hills Water District.

TRANSMISSION EQUIPMENT – Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

WIRELESS TELECOMMUNICATIONS FACILITY (OR FACILITIES) - Includes Antennas, Towers, and any structure, equipment, installation, facility, device, wires, cables or appurtenance designed, installed or intended to be used to support Antennas or other transmitting or receiving devices used for the purpose of transmitting, receiving, distributing, providing or accommodating cellular, radio, television, specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, 911, Personal Telecommunication Services (PCS), commercial satellite services, microwave, mobile and any commercial Wireless Telecommunication service not licensed by the FCC, including without limit mounts, Towers of all types, structures, buildings, church steeples, or anything that is used to support Antennas or its functional equivalent; and Distributed Antenna Systems (DAS) including all accessory facilities, installations, and equipment such as utility poles, transmission cables, wires, mounts, cabling, equipment shelters and other appurtenances.

§194-3. Exemptions. Unless otherwise provided, this Chapter shall not apply to the following:

- A. All Antennas which are accessory to permitted residential uses and are mounted on the residential dwelling without a tower, including but not limited to the reception Antennas for direct broadcast satellites (DBS), television broadcast stations (TVBS) and other customer-end Antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- B. Such uses that are licensed to operate by the Federal Communications Commission, pursuant to 47 CFR 97, or successor law, such as amateur radio operations, private citizen's bands, and other similar non-commercial Telecommunications, subject to the provisions of Article IX of Chapter 198 (Height, Area & Bulk Regulations).
- C. Uses which are pre-empted or exempt from local regulation by federal or state law or regulation.

- D. Repairs and maintenance to existing equipment shall not require any permits from the Town unless otherwise determined by the Director of Engineering Services or his designee.
- E. No license agreement shall be required of any entity that already holds a cable franchise issued by the Town for cable service as defined in 47 USCA §522(6), or telephone franchise, except that proposed installations of cabinets, boxes, equipment or other structures on the ground or partially below the surface of the ground along the public rights-of way shall be subject to site plan review (by the Planning Board unless exempted), highway work permits, building permits, and certificates of occupancy. The provisions of this section shall apply to both wired and wireless equipment.
- F. Facilities used exclusively for providing unlicensed spread spectrum technology i.e. Bluetooth or WiFi, where the facility does not require a new tower, where the service is not to be used for commercial purposes, where there is no fee or charge for the use of the service, and where the service is intended to be useable for less than 200 feet.

§194-4. Variances.

Variances from the requirements of this Chapter shall be considered by the Zoning Board of Appeals subject to the notice and hearing requirements set forth in §194-30. Any variances that may be necessary shall be identified in the Application for the installation of the Wireless Telecommunications Facility.

§194-5 through §194-7. Reserved.

ARTICLE II STANDARDS FOR DESIGN AND PLACEMENT

§194-8. Locational Considerations and Preferences.

A. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Facilities in order of the following priority list:

- (1) On existing Towers or other structures on Municipal Properties, Municipal Facilities (exclusive of decorative light poles and clocks), and Public Rights of Way adjacent to commercially and industrially zoned areas.
- (2) On existing Towers or other structures on commercially or industrially zoned property in the Town.
- (3) On existing Towers or other structures on residentially zoned property in the Town.

- (4) On Town right-of-ways adjacent to residentially zoned areas.
 - (5) On new Towers on properties zoned for commercial or industrial use.
 - (6) On new Towers on properties zoned for residential use.
 - B. The existence of a license agreement or investments in studying one location shall not be considered as a valid reason to bypass a location of higher priority.
 - C. Before erecting an entirely new Facility in a residentially-zoned area, the Applicant must demonstrate that its Facility cannot properly function within or upon an existing Tower or other Wireless Telecommunications Facility, or within or upon a proposed new Tower or structure on Municipal Property (except for Public Rights of Way in residential areas), Municipal Facilities (exclusive of decorative light poles and clocks), or in a commercial or industrial zoning district, including whether such alternate locations are Commercially Impracticable. Such evidence is also required to support requests to locate new Wireless Telecommunications Facilities within five hundred (500) feet of the boundary lines of property containing a public or private school or day care center, or to erect a new Tower in lieu of installing the Facilities within or upon an existing Tower or structure.
 - D. Notwithstanding that a potential site may be situated in a location of highest available priority, the Town may disapprove an Application for any of the following reasons:
 - (1) Aesthetic impact on a historic landmark or historic district; and
 - (2) The availability and suitability of a superior location in the opinion of the Town, where such alternate location is determined to not adversely impair the Applicant's ability to provide Wireless Telecommunications services.
 - E. Prohibited locations. Wireless Telecommunications Facilities shall not be installed or mounted on municipally-owned or controlled decorative lamp posts or clocks. New equipment and utility poles shall not be installed in locations where they obstruct the visibility of vehicular, bicycle, or pedestrian traffic and shall not screen traffic control signs and signals from view.
 - F. Principal and accessory use. Wireless Telecommunications Facilities may be considered either principal or accessory uses, in that the prior existence of a different use on the same lot shall not preclude the installation of an Antenna or Tower on such lot.
- §194-9. Criteria for Review. The following factors shall be considered for all Applications to locate Wireless Telecommunications Facilities.
- A. Due consideration shall be given to the Town's Comprehensive Plan, existing land uses and development, environmentally sensitive areas, and other appropriate factors

in approving the issuance of a special use permit or other Town approval for the siting of Wireless Telecommunications Facilities.

B. The reviewing Board shall give due consideration to the following factors where applicable.

- (1) Height, size, condition, stability, and appearance of the proposed or existing Facility, structure, pole, or device, with due consideration given to the applicable zoning district.
- (2) Proximity of the proposed use to residential structures and residential district boundaries.
- (3) Nature of existing and/or proposed uses on adjacent and nearby properties.
- (4) The topography of the site and surrounding areas.
- (5) Surrounding tree coverage and foliage.
- (6) Design and aesthetic appearance of the structure, Facility, or device, with particular reference to design elements that have the effect of reducing or eliminating visual obtrusiveness.
- (7) The proposed ingress and egress for construction and maintenance.
- (8) Availability of suitable existing uses or structures or poles.
- (9) Whether the proposed Wireless Telecommunications Facility, or its location, will impede or obstruct vehicular or pedestrian travel, obstruct or interfere with traffic control signs and signals, creates a nuisance or hazard, and/or substantially detracts from a historic landmark, site or district, scenic or visual space or corridor, or a culturally significant resource.
- (10) Any other relevant factor, including those found by the Board to be relevant considerations under statutory and decisional law, and regulatory agency rulings.

C. No Application shall be granted unless the Applicant demonstrates to the reasonable satisfaction of the Town Board, Planning Board, or Zoning Board of Appeals that no existing Facility or structure can accommodate the Applicant's proposed installation. Such evidence may consist of any or all of the following:

- (1) That no suitable existing structures or Wireless Telecommunications Facilities are available for Collocation within the geographic area which meet the Applicant's engineering requirements to resolve the Gap in Service or needed Densification of the network.

(2) That the fees and costs charged, or contractual provisions required by the owner of an existing Facility or structure in order to share it, or adapt it for sharing, are unreasonable or Commercially Impracticable.

D. The Applicant must demonstrate a good faith effort to locate the Facility in the least intrusive location on the property or structure, in a manner that preserves the character and aesthetics of the area by maximizing the use of site configurations, building materials, and design to blend the project in with the surrounding area.

E. The Applicant must establish that a Gap in Service or Densification exists that requires the location of Wireless Telecommunications Facilities at the proposed location. In determining whether a Gap in Service or Densification exists at a specific location, the Board must find that the Telecommunications failure exists and can only be remedied by the location of the proposed Antennas, DAS system, or Tower. Such evidence shall include documentation of the coverage area of existing Facilities within the area the Applicant contends is a Gap in Service or Densification to be served by the proposed Facility. In determining what constitutes substantial remediation of a Gap in Service or Densification, and to what extent an Applicant needs to locate a Facility at a specific location or Height, and what level of service is to be made available to users, the Board shall be guided by standards set or as interpreted by federal or state law, decisional law and regulatory agencies.

§194-10. General aesthetic requirements. All Wireless Telecommunications Facilities shall comply with the following requirements, unless otherwise required by the FAA, FCC or other applicable authority:

A. Color. All Wireless Telecommunication Facilities shall be of a neutral color or such other color(s) as the Board may require to reduce the visual impact to surrounding areas. If an Antenna is installed on a structure other than a Tower, it and its supporting electrical and mechanical components must be of a color that is identical to or closely compatible with the color of the supporting structure so as to render it as visually unobtrusive as practicable. Whenever possible, Antennas on top of a building shall be placed in a location where they are not visible from street level.

B. Design. All Wireless Telecommunication Facilities shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.

C. Lighting. The Facility shall not be artificially lighted. If required by safety codes or as expressly authorized by the reviewing Board for good cause shown by the Applicant, lighting shall be designed to minimize to the maximum extent practicable the resultant disturbance to the surrounding views and properties, and shall comply with the Town's dark skies legislation in Chapter 143 of the Town Code. Any Person who commits an offense against the provisions of this section shall be deemed to be in

violation of this Chapter and Chapter 143 and shall be subject to the fines and penalties set forth herein.

- D. Signs. The Facility shall not bear any signs or advertising devices other than legally required certifications, warnings, or other required seals or signage, or as expressly authorized by the reviewing Board for good cause shown by the Applicant. Any Person who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.
- E. Screening. Towers, equipment enclosures, and generator enclosures shall be landscaped with vegetation and/or fencing sufficient to screen the view of such uses from surrounding property, and to maintain the aesthetic quality of the surrounding community, typically consisting of at least one (1) row of mixed evergreen shrubs and trees capable of forming a hedge at least eight (8) feet in height.
- F. Preservation of site. Existing mature tree growth and natural land forms and topography at the site shall be preserved to the maximum extent possible.
- G. Stealth and Concealment. Where Antennas or other equipment cannot comply with these aesthetic requirements and would be easily visible from street level around the installation, the reviewing Board may require that solid opaque panels of sufficient size be installed to shield the equipment from view. No material that affects the ability of the Antennas to function will be required. Concealment may also be required on properties occupied by or adjacent to historic sites, schools, and houses of worship, and in the Hamlet Centers. The Stealth material should comply with the color and design standards in this chapter.

§194-11. Specific Locational Aesthetic Requirements. All Wireless Telecommunications Facilities in the following specified areas shall be designed and constructed in order to minimize the visual and audible impact on the surrounding areas. Unless the use of such design features would impair the ability of the Facility to provide Wireless Telecommunications services or is Commercially Impracticable, all Wireless Telecommunications Facilities shall utilize Collocation and Stealth Technology consistent with the prevailing natural and architectural features in the area in which the Facility is to be constructed or modified. In order to comply with these standards, all Wireless Telecommunications Facilities shall be consistent with the following standards.

- A. Hamlet Centers. Facilities to be located in the Town's Hamlet Centers shall comply to the extent permitted by existing technology, with the following criteria:

- (1) Where technologically feasible, all Facilities shall be constructed and installed on either an existing Tower or the rooftops of commercial or retail buildings with adequate setback from the edge of the building to render them incapable of being visible from street level. Wherever technologically feasible, the placement of Facilities within existing architectural features such as steeples,

cupolas, bell towers or similar structures so as to render them incapable of being visible is encouraged as a form of Stealth Technology or design. Where, due to technical limitations relating to either the structural limitations of the building on which the Facility is to be installed or because the Facility would be unable to provide a sufficient wireless signal to provide Wireless Telecommunication services, the Facility cannot be located upon a rooftop, the Facility shall be placed on the face of a building wall unless such placement would degrade the ability of the Facility to provide the necessary wireless signal. Wherever visible, the Facility shall be constructed in order to be consistent with the architectural features and match the color of the building on which it is installed in order to minimize, to the greatest degree possible, its visual impact upon the surrounding area.

- (2) Where it is not feasible to locate a Facility on an existing building or Tower, the Antenna shall be placed inside a new decorative pole or clock of comparable design and color to those existing in the Hamlet Center at the time of the installation, raised to the Height necessary to ensure compliance with FCC RF limits. All equipment relating to the Facility other than the Antenna shall be vaulted underground. In the event it is not possible to vault the equipment for the Facility it shall be contained in a decorative base of identical color to the pole or clock so as to minimize its visual and audible impact. Associated electric meters shall be contained within the decorative base unless prohibited by the electric utility providing service to the Facility.
- (3) In the event that due to either the inability to provide the necessary level of coverage or the absence of an existing Tower, suitable building site or new decorative pole in the area in which it is proposed to be constructed, the Facility cannot be constructed or installed in accordance with the requirements of 194-11(A)(1) or (2), it shall be constructed and installed on a pole utilizing Stealth Technology. Such poles shall consist of a "clamshell" or similar type base approved by the Town Board, Planning Board or Zoning Board of Appeals, in which all related equipment, including any associated electrical meter is fully contained inside the pole. Such Stealth Technology pole shall be painted a solid, opaque flat color so as to minimize the visual impact of the Facility on the surrounding area.

B. Residential Zoning Districts. Facilities to be constructed in any residential zoning district or within one hundred (100) feet of a residential zoning district within the Town of Huntington shall comply, to the extent permitted by existing technology, with the following criteria:

- (1) All Facilities installed on utility poles, including any electric meter required to provide service to the Facility, shall be painted a solid, flat color to match the color of the utility pole and minimize the visual impact on the surrounding area.

(2) In the event there is no existing utility pole or alternative structure in the area in which the Applicant proposes to construct and install the Facility, the Applicant shall construct and install the Facility utilizing Stealth Technology if directed by the Planning Board. Stealth poles shall consist of an opaque "clamshell" or similar type base approved by the Planning Board, in which all related equipment, including any associated electrical meter, is fully contained inside the pole. Such Stealth Technology Wireless Transmission Facilities shall be painted a solid, flat color to minimize the visual impact of the Facility on the surrounding area.

C. Sensitive Locations. Facilities to be constructed within and adjacent to Sensitive Locations shall comply with the following criteria: The Applicant shall construct and install the Facility utilizing Stealth Technology if directed by the Planning Board. Stealth poles shall consist of an opaque "clamshell" or similar type base approved by the Planning Board, in which all related equipment, including any associated electrical meter, is fully contained inside the pole. Such Stealth Technology Wireless Telecommunications Facilities shall be painted a solid, flat color to minimize the visual impact of the Facility on the surrounding area.

§194-12. Noise. At no time shall equipment noise (including chilling units, cooling fans, and backup generators or other power supplies) from any installation exceed the applicable requirements of the Town noise ordinance, and federal and state statutory requirements, whichever is stricter, at the site of the installation. Any Person who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter and the Noise Code in Chapter 141, or successor law, and shall be subject to the fines and penalties set forth therein.

§194-13. Reserved.

ARTICLE III STANDARDS FOR TOWERS

§194-14. Tower Requirements. In addition to the requirements in Article II, all Towers shall be subject to the following:

A. Distance between Towers. The minimum distance between Towers shall be five thousand (5,000) feet, measured by drawing or following a straight line between the base of any existing like use and the base of the proposed use, delineated on a map or site plan. Said distance requirement may be reduced by the reviewing Board only after a finding that a specific Application merits a reduction and closer siting due to reception and/or transmission limitations caused by topographical interference; avoidance of residential neighborhoods.

B. Towers shall be set back from any adjoining residentially-zoned or residentially-used lot line a distance equal to at least one hundred twenty-five (125%) percent of the Height of the Tower, and this requirement may be varied only if the reviewing Board

finds that the relaxation of this standard will not create an unsafe condition or increased aesthetic impact. In addition, all Applicants shall demonstrate that the Tower is designed to fall within the located property and away from any building.

- C. All proposed Tower Applications shall contain a demonstration that the Facility will be sited so as to minimize visual intrusion, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character, and on the residences in the area of the Wireless Telecommunications Facility. The Applicant shall show on the site plans or describe in writing how it shall effectively screen from view the base of the Tower and all related equipment, including generators, and structures of the proposed Wireless Telecommunications Facility. Landscaping and Stealth Technology will be required where possible as described in §194-10 and §194-11.
- D. The Applicant shall submit documentation justifying the total Height of any Tower requested and the basis thereof. The documentation shall include propagation studies at the requested Height and at least two intervals of twenty (20') feet lower in Height to support the request for the proposed Height.
- E. Security fencing. Such uses shall be surrounded by security fencing not less than eight (8) feet in height (unless Chapter 198 of the Town Code limits the height to six (6) feet) and shall be equipped with appropriate anticlimbing devices, where applicable.
- F. All utilities at a Tower site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules, and regulations of the Town, including specifically, but not limited to, the 2020 New York State Uniform Fire Prevention and Building Code and the 2017 National Electrical Code, or successor laws as adopted by New York State, where appropriate.
- G. All Towers shall be constructed in accordance with ANSI/TIA-222-H or successor standards.

§194-15. Additional standards for new Towers and all Towers Increasing in Height. The following additional standards shall be applied unless the Application is an Eligible Facilities Request:

- A. New Towers shall be structurally designed to accommodate at least three (3) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's equipment as possible without causing interference. The requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable, or creates an unnecessary and unreasonable burden, based upon:

- (1) The ability to comply with ANSI/TIA-222-H or successor construction standards;

- (2) The kind of Wireless Telecommunications Facility site and structure proposed;
 - (3) The number of existing and potential FCC licenses without Wireless Telecommunications Facilities spaces/sites;
 - (4) Available space on existing and approved Towers.
- B. The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
- (1) Respond within a reasonable amount of time to a request for information from a potential shared-use Applicant;
 - (2) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 - (3) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - (4) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit or other approval issued by the Town.
- C. If a new Tower or Modifications increasing the Height of an existing Tower is proposed, the Applicant shall furnish a Visual Impact Assessment, which shall include:
- (1) A computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure, with and without foliage to illustrate locations from which the proposed installation may be seen.
 - (2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints surrounding the proposed site. Provide a map showing the locations of where the pictures were taken and identify the distance between such locations and the proposed structure.

§194-16 through §194-17. Reserved.

ARTICLE IV

ELIGIBLE FACILITY REQUESTS§194-18. Applications for Eligible Facility Requests.

A. An Application for proposed work qualifying as an Eligible Facility Request shall be made to the Department of Planning and Environment, and shall include the appropriate fee. The Department of Planning and Environment shall, upon receipt of such an Application, promptly review said Application to confirm that the proposed work qualifies as an Eligible Facility Request. All Applications shall include the following Application materials:

- (1) A statement of the nature of the Modification to the existing Wireless Telecommunications Facility including the coverage and/or Densification, and a description of its compliance with Town, State, and Federal requirements and recommendations.
- (2) A written statement of why the Application qualifies as an Eligible Facilities Request.
- (3) A completed Application form, including any required Disclosure Certification forms as adopted by the Town for the Application.
- (4) Copies of the completed building permit Applications that were submitted to the Department of Engineering Services for the proposed work simultaneously with the Application for an Eligible Facilities Request.
- (5) An escrow deposit as established by the Town Board to be paid by the Applicant.
- (6) For Eligible Facilities Request Applications, a site plan drawn to scale meeting all the requirements contained in this Chapter and the Subdivision and Site Plan Regulations of the Town, which shall include:
 - (a) The postal address and tax map parcel number of the property.
 - (b) The Zoning District in which the property is situated.
 - (c) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.
 - (d) The location, size and height of all existing and proposed structures on the property which is the subject of the Application.
 - (e) The azimuth, size and center-line Height location of all proposed and existing Antennas on the supporting structure.

- (f) The location of any proposed Towers, Antennas, equipment cabinets, and generators, and all related fixtures, structures, appurtenances, and apparatus, including a labeling of dimensions and setbacks, materials, colors, and lighting.
 - (g) Delineation of all distances between the proposed use and all adjoining residentially-zoned or residentially-utilized properties, and the distance between the nearest boundary line of any Sensitive Location and the Facility at issue if the distance is five hundred (500) feet or less.
- (7) If new Antennas are proposed, a report verifying that the Wireless Telecommunication Facility will be in full compliance with the current FCC RF Emissions guidelines. This report shall show the anticipated radiofrequency emissions of the proposed Antenna installation combined with all existing Antennas on the site, in comparison to FCC guidelines at ground level and at same-Height exposure, if applicable, for general population standards.
- (8) If new Antennas are proposed, a statement containing the following information: (a) frequency and modulation of transmitting equipment; (b) actual intended transmission power stated as the maximum effective radiated power (ERP) in watts; (c) that an attached copy of the FCC license for the intended use of the Telecommunication Facilities is a true and complete copy; and (d) the number, type and model of the proposed Antenna(s) with a copy of the specification sheet.
- (9) A photograph, photograph simulation, or architectural drawing to demonstrate the appearance of the proposed Facility.
- B. The Department of Planning and Environment shall determine whether the proposed work or Modification to existing Wireless Telecommunications Facilities or new installations qualifies as an Eligible Facility Request. Notwithstanding an application's status as an Eligible Facilities Request, the Town can consider and enforce generally applicable building, zoning, structural, electrical, and safety codes in its review of the application. A joint Application for the same type of Modifications to multiple sites may be made provided a separate Application fee is paid for each site subject to the provisions of this chapter.
- C. No site plan pre-application conference or public hearing will be required for Eligible Facility Requests.
- D. The Director may require the retention of consultants, at the Applicant's expense, to assist it in its determination. The review of the Application may include a physical inspection of the site or facility at the discretion of the Director.

- E. If a request to classify an Application as an Eligible Facility is denied, the fee paid for the review can be applied towards a new Application for the standard approval before the appropriate Board.
- F. If a request to classify an Application as an Eligible Facility is approved, no Town Board, Planning Board, or Zoning Board of Appeals approval in accordance with Articles V, VI, VII, and VIII will be required, except that proof of compliance with the insurance requirements set forth in §198-25 shall be provided. Further, in the event that a request involves the Collocation of equipment by a new wireless carrier on Municipal Property, a Municipal Facility, or the Public Right-of-Way, the new carrier shall enter into a license agreement with the Town authorizing the use of the Municipal Property, Municipal Facility, or Public Right-of-Way, and pay an appropriate license fee to the Town. If applicable, Applicants will still have to demonstrate compliance with the design standards of Articles II and III.
- G. Other necessary approvals. Eligible Facilities are subject to the filing of Applications for and issuance of building permits, certificates of occupancy, highway roadway opening permits, and other approvals, as is applicable to each such installation. The Applicant shall pay all required fees and charges for such approvals as established by the Town Board or local law. Any Person who fails and/or neglects to file an Application and secure all other necessary approvals and permits before the commencement of work shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein

ARTICLE V

PUBLIC LANDS AND STRUCTURES

§194-19. Municipal Facilities, Municipal Property and Public Right-of-Ways.

- A. Municipal Facilities and Municipal Property. Applications for a license agreement to erect, install, attach, deploy, operate, maintain, alter, or Modify Wireless Telecommunications Facilities in, over or upon Municipal Facilities and Municipal Property shall be determined solely by the Town Board or Board of Trustees, as owner thereof, who shall exercise the same authority in reviewing the Application as the Zoning Board of Appeals in Article VI in all respects and without limitation. No site plan approval by the Planning Board shall be required; however, a site plan pre-application shall be completed before building permits will be issued.

B. Public Right-of-Ways.

- (1) Applicants for a license agreement to use the Public Right-of-Ways which also include a request for permission to (a) attach, install, alter, or maintain Wireless Telecommunication Facilities along the Public Right-of-Ways on specific poles, streetlights, stanchions and other similar structures owned by the Town, utility companies or other entities; or (b) to install utility poles, boxes, cabinets, equipment or other structures on or partially below ground

level at specific locations along the Public Right-of-Ways, whether or not the structures are part of a Wireless Telecommunications franchise, shall file an Application with the Town Board or Board of Trustees, as the case may be, for a license agreement along with an Application for site plan pre-application approval before the Planning Board who shall have jurisdiction to review and approve, on a site-specific basis, proposed installations of all kinds along the Public Rights-of-Ways. New Towers in the public rights-of-way shall not be permitted. The Planning Board shall determine whether federal and state standards, and the requirements of the Town Code are met for the specific equipment and locations requested by the Applicant, and may grant or deny, in whole or in part, with or without conditions, attachments or installations at such locations it deems advisable during site plan pre-application review in accordance with state and federal law.

(2) Subsequent Applications to locate or install additional equipment or structures, or to Modify existing installations along the Public Right-of-Ways as described herein once a license agreement is in place shall continue to be determined by the Planning Board on a case specific basis during expedited site plan pre-application review. The Planning Board may grant or deny an Application, in whole or in part, with or without conditions, as it deems advisable upon site plan pre-application review in accordance with state and federal law.

C. Any Person who fails and/or neglects to file an Application for a license agreement, or for site plan pre-application approval, and secure all other necessary approvals and permits before the commencement of work shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-20. Reserved.

§194-21. Application requirements. An original and eleven copies of an Application to the Town Board or Board of Trustees for a license agreement shall be filed in the Office of the Huntington Town Clerk and shall consist of all materials listed in §194-42. An electronic copy of all documents must also be provided or made available. A non-refundable Application fee and refundable escrow fee in amounts established by the Town Board shall accompany the Application. The Application fee shall be tripled in all cases where installations have been made or work commenced without the necessary Town approvals or permits. The Town Clerk shall forward copies of the Application to the Town Board, Director of Planning and Environment, Director of Engineering Services, the Town Attorney, and when use of the Public Rights-of-Way is requested, the Superintendent of Highways. The Town Board may refer an Application to other Town agencies or departments for recommendations on any issue it deems necessary and proper. Such referral shall specify the reasons for the referral. Site plan pre-applications to the Planning Board shall contain the materials listed in §194-45.

§194-22. Public hearing; notice.

- A. All Applications for a license agreement before the Town Board or Board of Trustees shall be determined after a public hearing. Applicants proposing Wireless Telecommunications Facilities shall mail a notice of public hearing, postmarked no less than ten (10) days before the hearing to the owners and occupants of all properties located within five hundred (500) feet of the nearest boundary line of the property which is the subject of the Application, as shown on the current tax roll, with the exception of Applications for placement in the R-15, R-10, R-7 and R-5 zoning districts, where notification to adjoining property owners and occupants shall be to those within two hundred (200) feet of the nearest boundary line of the subject parcel, as shown on the current tax roll. Notice of the public hearing shall be published by the Town Clerk at least ten (10) days before the hearing in the official newspaper(s) of the Town.
- B. Proof of mailing. The Applicant shall provide a certificate of mailing certified by the United States Postal Service for each recipient that legibly indicates the name and address of the property owner and occupant to which notice was mailed. The certificate of mailing shall be filed by the Applicant in the Office of the Town Clerk along with an affidavit of mailing no less than five (5) business days before the hearing. Failure to mail notice of the public hearing or file the certificate of mailing and affidavit of mailing within the required period shall result in postponement of the public hearing at the Applicant's cost and expense which shall include the cost of republishing the notice of hearing.
- C. In the case of a site plan pre-application to attach Wireless Telecommunications Facilities to Municipal Facilities and poles, streetlights, stanchions and similar structures owned by utility companies or other entities along the Public Rights-of-Way, or to install cabinets and other structures at various locations along the Public Rights-of-Way either on or partially below the ground, the Applicant shall provide notice of the Application to the owners of all property within 100 feet of the proposed Wireless Telecommunications Facility within ten (10) business days of the date a complete Application is filed. Such notice shall be mailed by certified mail to the property owners as listed on the property tax rolls of the Town. The notice shall contain the name and contact information of the Applicant and Department of Planning and Environment, the purpose of the Application, the proposed location of the Wireless Telecommunications Facility, and a description of the equipment being installed, including a diagram or photograph illustrating its appearance. Within fifteen (15) business days of the date a complete Application is filed the Applicant shall deliver to the Department of Planning and Environment an affidavit of mailing and a copy of the notice. No public hearing shall be required, but written comments will be accepted for consideration by the Planning Board.

§194-23. Town Board action on Applications. An Application for a license agreement can be approved or denied, in whole or in part, with or without conditions as deemed advisable by the Town Board or Board of Trustees in accordance with state and federal

law. If the Application is approved, in whole or in part, a license agreement shall be authorized and shall contain the term of the license; conditions on the use or occupation of the property or structure(s), including separate compensation, where applicable, for the use of public rights-of-way, municipal facilities, and municipal property; provisions for construction and/or performance bonds; indemnity and insurance; obligations concerning areas disturbed during construction, installation, attachment or maintenance activities; submission of annual inventory reports showing the exact location of all installations; conditions on transfer or assignment; and such other conditions consistent with the requirements and intent of this chapter that ensures that the Applicant's use or occupation of public property minimizes disruption to the public, adheres to all applicable laws, and promotes safe, effective and efficient use of town resources.

§194-24. Conditions of approval. In addition to any other condition or restriction the Town Board or Board of Trustees deem necessary or advisable under the circumstances, all approvals, as set forth below, shall include the following conditions, whether approved by a Board or by operation of law, and whether or not same is set forth in the Resolution approving the Application. Any Person who fails and/or neglects to comply with the conditions of approval shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

A. Public Rights-of-Way. In cases where installations are proposed for along the ground or partially below the ground of the Public Rights-of-Way, or on poles, streetlights, and stanchions owned by the Town or by one other than the Town along the Public Rights-of-Way, the following shall apply.

- (1) Indemnification. To the fullest extent permitted by law, and whether or not the facilities being approved are wired or wireless, the Applicant and any successors and assigns, shall indemnify and hold harmless the Town, its Boards, public officers, employees, servants and agents, from and against any liability, claims, suits, actions, administrative and regulatory proceedings, losses, expenses and costs of any kind, whether actual, alleged, or threatened, including but not limited to actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to the existence, maintenance, location, configuration, design, installation, or operation of the Wireless Telecommunications Facility, the issuance of any municipal approval by the Town or Board, or arising out of the obligations of the parties under the license agreement, except for the sole gross negligence or willful acts of the Town, the Town Board, Board of Trustees, or Planning Board, as the case may be, their public officers, employees, servants, and/or agents. The Applicant shall pay such obligations as they are incurred by the Town and/or Boards, their public officers, employees, servants, and/or agents, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the Town reasonably determines necessary to protect the Town, Boards, officials, employees, servants and/or agents from exposure to fees, costs, attorney fees, or liability with respect to such claim or lawsuit. If any provision of the

license agreement or resolution approving the Application shall conflict with the provisions of this subsection, then in such event, the provisions of this subsection shall control; and

- (2) Height. To the fullest extent permitted by law, no pole, mast, or mount and all attached equipment, including Antennas, exceeding 50 feet in Height above ground level shall be installed or located within the Public Rights-of-Way, and this height limit may not be varied by any Board; and
- (3) Compliance with law. The Applicant shall comply with all applicable provisions of the Town Code, license agreement, any permit or approval issued pursuant to this Chapter, and all other applicable federal, state and local laws, rules and regulations. Any failure of the Town to enforce compliance with such approval or any applicable law, rule or regulation shall not relieve the Applicant of its obligations under the code, any permit or approval issued, or other applicable law; and
- (4) Verification of data. The owner of the site or pole, the Applicant and operator of the facility or equipment shall cooperate with the Town to (a) verify that the facility design conforms to relevant building, maintenance, landscaping and safety requirements and specifications; and (b) verify that the facility complies with the applicable provisions of the Town Code and federal and state rules and regulations.
- (5) Proper maintenance. All Wireless Telecommunications Facilities shall be maintained in a safe and proper manner. Any Person who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

B. Municipal Property and Municipal Facilities. In cases where installations are proposed on Municipal Property or Municipal Facilities, the following shall apply.

- (1) Indemnification. To the fullest extent permitted by law, and whether or not the facilities being approved are wired or wireless, the Applicant and any successors and assigns, shall indemnify and hold harmless the Town, its Boards, public officers, employees, servants and agents, from and against any liability, claims, suits, actions, administrative and regulatory proceedings, losses, expenses and costs of any kind, whether actual, alleged, or threatened, including but not limited to actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to the existence, maintenance, location, configuration, design, installation, or operation of the Wireless Telecommunications Facility, the issuance of any municipal approval by the Town or Board, or arising out of the obligations of the parties under the license agreement, except for the sole gross negligence or willful acts of the Town, the Town Board, Board of Trustees, or Planning Board, as

the case may be, their public officers, employees, servants, and/or agents. The Applicant shall pay such obligations as they are incurred by the Town and/or Boards, their public officers, employees, servants, and/or agents, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the Town reasonably determines necessary to protect the Town, Boards, officials, employees, servants and/or agents from exposure to fees, costs, attorney fees, or liability with respect to such claim or lawsuit. If any provision of the license agreement or resolution approving the Application shall conflict with the provisions of this subsection, then in such event, the provisions of this subsection shall control; and

- (2) Compliance with law. The Applicant shall comply with all applicable provisions of the Town Code, license agreement, any permit or approval issued pursuant to this Chapter, and all other applicable federal, state and local laws, rules and regulations. Any failure of the Town to enforce compliance with such approval or any applicable law, rule or regulation shall not relieve the Applicant of its obligations under the code, any permit or approval issued, or other applicable law; and
- (3) Verification of data. The owner of the site or pole, the Applicant and operator of the facility or equipment shall cooperate with the Town to (a) verify that the facility design conforms to relevant building, maintenance, landscaping and safety requirements and specifications; and (b) verify that the facility complies with the applicable provisions of the Town Code and federal and state rules and regulations.
- (4) Proper maintenance. All Wireless Telecommunications Facilities shall be maintained in a safe and proper manner. Any Person who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-25. Insurance Requirements.

A. An owner and/or operator of a Wireless Telecommunications Facility on Municipal Facilities, Municipal Property and Public Rights-of-Way shall secure, and at all times maintain, in full force and effect, insurance coverage as set forth below:

- (1) Commercial General Liability Coverage: covering bodily injury, personal injury, property damage, public disputes, libel, slander, and other events related to their products and operations with limits of no less than \$2,000,000 per occurrence/\$2,000,000 in the aggregate. Said coverage may not contain any electromagnetic frequency (EMF) exclusions; and
- (2) Commercial Automobile Liability Coverage: with limits of no less than \$1,000,000 per occurrence/ \$2,000,000 in the aggregate; and

- (3) Workers Compensation and Disability Insurance with limits of no less than \$1,000,000, or in the statutory amount, whichever is greater; and
 - (4) Umbrella Liability Coverage with limits of no less than \$5,000,000 per occurrence/\$5,000,000 in the aggregate.
 - (5) Commercial Property Insurance with limits of no less than the value of all of the Owners' Property and Equipment including but not limited to cellular Towers, Antennas, and related equipment.
 - (6) Stand Alone Network Security/Cyber Liability Insurance with limits of no less than \$5,000,000 per occurrence/\$5,000,000 aggregate.
- B. The Commercial General Liability Insurance Policy and Commercial Property Coverage shall specifically include the Town of Huntington, Huntington Board of Trustees, and its elected officials, officers, boards and employees as additional insureds, by endorsement, and a copy of the endorsement shall be provided to the Town Attorney's Office, as respects any covered liability arising out of or in connection with the issuance of a license agreement or other approval by the Town, the performance of the work, the installation, maintenance and operation of its Wireless Telecommunication Facility, and its use and occupancy of the Public Rights-of-Way, Municipal Property, and Municipal Facilities. Coverage shall be in an occurrence format and in accordance with the limits set forth herein. Claims-made policies are not acceptable.
- C. All policies shall be on a form acceptable to the Town Attorney. All insurance providers shall be authorized to do business in the State of New York and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of at least "A VII" overall.
- D. The insurance shall not be canceled, non-renewed, or any material change made by the owner or operator of the Telecommunication Facility, nor shall the required occurrence or aggregate limits be reduced during the term of the license agreement, or while the installation is in place, unless approved by the Town Attorney in writing. The owner or operator shall be responsible for notifying the Town in writing of any cancellation, non-renewal, or material change at least thirty (30) business days prior to such action and for non-payment of premium at least ten (10) business days prior to such cancellation. The failure of such Person(s) to maintain in good standing the coverages and insurance policies set forth herein during the term of the license agreement, or while the installation is in place, or to notify the Town of any proposed cancellation shall be deemed a violation of this chapter.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) business days before the expiration of the insurance that such policies are to renew or replace. The certificate(s) of insurance shall be mailed with the payments

required to be made, if applicable, pursuant to the license agreement to the attention of the Town Comptroller and Town Attorney.

- F. The owner/operator shall pay all premiums and deductibles applicable to its insurance policies.
- G. All coverage shall be primary and non-contributory to the Town of Huntington and the Town of Huntington Board of Trustees, its elected officials, officers, boards, and employees.
- H. The owner/operator will remain fully informed of all municipal ordinances and regulations, State and Federal Laws in any manner affecting the work or goods herein specified, and any extra work contracted by the Contractor and shall at all times observe and comply with said ordinances, laws, and regulations, including all applicable provisions of the Workers' Compensation and Labor Laws. The owner/operator agrees to defend, indemnify, and hold the Town of Huntington, Town of Huntington Board of Trustees, its officers, agents, and employees harmless from any liability and attorney's fees, imposed upon or incurred by the Town, its officers, agents, and/or employees arising from the negligence, gross negligence, recklessness, malpractice, or intentional tort of the contractor including any Action Over Claims.

§194-26. Other necessary approvals. Subject to the provisions of this Chapter, all Wireless Telecommunications Facilities approved for installation are subject to the filing of an Application for and issuance of building permits and certificates of occupancy, or other necessary approvals for each node, Antenna, piece of equipment or structure to be installed. The installation of new poles, streetlights, stanchions and other similar structures, or ground-mounted equipment and structures in Public Rights-of-Way shall also require road opening permits from the Highway Department. The Applicant shall pay all required fees and charges for such approvals. Any Person who fails and/or neglects to file an Application and secure all other necessary approvals and permits before the commencement of work shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-27 through §194-28. Reserved.

ARTICLE VI PRIVATE LANDS AND STRUCTURES

§194-29. Privately-Owned Property. Applications to erect, install, attach, or Modify Wireless Telecommunications Facilities on privately-owned parcels and structures shall require a special use permit from the Zoning Board of Appeals, unless exempted under §194-3 or classified as an Eligible Facility under §194-2 and §194-18. New Towers shall be subject to the provisions of Article III of this Chapter. Any Person who fails and/or neglects to file an Application for a special use permit and secure all necessary approvals and permits before the commencement of work shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-30. Application requirements. An original and twenty-two copies of a completed Zoning Board of Appeals application complying with §194-42 and §198-66 of the Town Code shall be filed with the Zoning Board of Appeals clerk along with a non-refundable Application fee and refundable escrow deposit in amounts established by the Town Board. An electronic copy of all documents must also be provided or made available. The Application fee shall be tripled in all cases where installations have been made or work commenced without the necessary Town approvals or permits. The Application will follow the established procedures for special use permit review by the Zoning Board of Appeals in Article XVI of Chapter 198 of the Town Code.

- A. Public hearing; notice. All Applications before the Zoning Board of Appeals, unless exempted, shall be determined after a public hearing. Applicants shall mail a notice of public hearing, postmarked no less than ten (10) days before the hearing, to the owners and occupants of all properties located within five hundred (500) feet of the exterior limits of the Applicant's total property holdings which are the subject of the Application, as shown on the current tax roll, with the exception of Applications for placement in the R-15, R-10, R-7 and R-5 zoning districts, where notification to adjoining property owners and occupants shall be to those within two hundred (200) feet of the exterior limits of the Applicant's total property holdings, as shown on the current tax roll. Notice of the public hearing shall be published by the Zoning Board of Appeals at least ten (10) days before the hearing in the official newspaper(s) of the Town.
- B. Proof of mailing. The Applicant shall provide a certificate of mailing certified by the United States Postal Service for each recipient, which legibly indicates the name and address of the property owner and occupant to which notice was mailed. The certificate of mailing shall be filed by Applicants with the Zoning Board of Appeals clerk no less than five (5) business days before the hearing. Failure to mail notice of the public hearing or file the certificate of mailing within the required period shall result in postponement of the public hearing at the Applicant's cost and expense which shall include the cost of republishing the notice of hearing.
- C. Signage. The Applicant or authorized agent shall also post a sign on each frontage of the subject property giving notice that an Application is pending before the Zoning Board of Appeals, and the nature of the Application as well as the date, time and place at which the hearing will be held. The specific location, size of the sign, and length of time the sign is displayed, together with a filing by the Applicant of proof of such posting shall be as set forth in §198-112(F) of the Town Code.

§194-31. Reserved.

§194-32. Action on Applications. The Application can be approved or denied, in whole or in part, with or without conditions as deemed advisable by the Zoning Board of Board Appeals in accordance with state and federal law. The Board shall have all of the powers vested in it by law. Any Person who fails and/or neglects to comply with the conditions

of approval shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-33. Other necessary approvals. Subject to the provisions of this Chapter, all Wireless Telecommunications Facilities approved for installation are subject to the filing of Applications for and issuance of site plan approval, building permits, and certificates of occupancy and/or other necessary approvals for each node, Antenna, piece of equipment or structure to be installed. The Applicant shall pay all required fees and charges for such approvals as established by the Town Board. Any Person who fails and/or neglects to file an Application and secure all other necessary approvals and permits before the commencement of work shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-34. Proper maintenance; compliance with law. All Wireless Telecommunications Facilities shall be maintained in a safe and proper manner, and shall be in compliance with all conditions of the Zoning Board of Appeals approval, building permit, site plan approval, as well as with all applicable Town, State and Federal laws, rules and regulations, without exception. Any Person who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein. Any failure of the Town to enforce compliance with such approval or any applicable law, rule or regulation shall not relieve the Applicant of its obligations under the code, any permit or approval issued, or other applicable law.

§194-35 through §194-37. Reserved.

ARTICLE VII PLANNING BOARD APPROVALS

§194-38. Site Plan Pre-Applications.

- A. All Applicants for the location of Wireless Telecommunications Facilities in any zoning district must file a site plan pre-application, including those activities which are the subject of a license agreement with the Town Board, except for exempt Applications pursuant to §194-3 and Eligible Facilities Requests pursuant to §194-18.
- B. Application requirements. The Application for a site plan pre-application shall be organized as required and filed with the Department of Planning and Environment and shall consist of all materials listed in §194-44 or §194-45 and on the application form. An electronic copy of all documents must also be provided or made available. The site plan pre-application shall include a non-refundable Application fee in the amount established by the Town Board.
- C. Action on Applications. The site plan pre-application process shall be complete upon the adoption of a Planning Board resolution, the issuance of a Letter of Denial by the Department of Planning and Environment, or the issuance of a letter confirming that

no additional approvals are required. The Letter of Denial will specify the next step in the process, if necessary, required to obtain approval for the proposed Wireless Telecommunications Facility.

§194-39. Site Plan Applications.

- A. All Applicants for the location of Wireless Telecommunications Facilities in any zoning district must file an Application for site plan approval with the Department of Planning and Environment, except for exempt Applications pursuant to §194-3, Eligible Facilities Requests pursuant to §194-18, and those activities which are the subject of a license agreement with the Town Board or Board of Trustees pursuant to §194-19(A). The Planning Board or the Director of Planning and Environment may waive site plan approval if no significant land or building disturbance is involved. The need for site plan review will be determined during the site plan pre-application process.
- B. Site plan review by the Planning Board shall run concurrently with review by the Zoning Board of Appeals, the Town Board, or the Board of Trustees, as the case may be, and shall be timed so that determinations can be made at approximately the same time to the extent practicable.
- C. Application requirements. An original and one copy of a Planning Board site plan application shall be organized as required and filed with the Department of Planning and Environment and shall consist of all materials listed in §194-44 and on the application form. An electronic copy of all documents must also be provided or made available. Four (4) copies of any site and architectural plans will be sufficient. The site plan application shall include a non-refundable Application fee in the amount established by the Town Board.
- D. Public hearing. Site plans for Wireless Telecommunications Facilities shall not require a public hearing.
- E. Action on Applications. The Application can be approved or denied, in whole or in part, with or without conditions as deemed advisable by the Planning Board. The Board shall have all of the powers vested in it by law.
- F. Other necessary approvals. Subject to the provisions of this Chapter, all Telecommunications Facilities approved for installation are subject to the filing of Applications for and issuance of building permits, and certificates of occupancy and/or other necessary approvals for each node, Antenna, piece of equipment or structure to be installed. The Applicant shall pay all required fees and charges for such approvals.
- G. Violation. Any Person who fails and/or neglects to file an application for site plan approval, secure all necessary approvals and permits before the commencement of

work, and complies with the conditions of approval shall be deemed to be in violation of this Chapter and shall be subject to the fines and penalties set forth herein.

§194-40 through §194-41. Reserved.

ARTICLE VIII APPLICATION REQUIREMENTS

§194-42. Applications before the Town Board, Board of Trustees, or Zoning Board of Appeals. Applications for Wireless Telecommunications Facilities except for Eligible Facilities Requests shall include the following documentation. Where a certification is required, such certification shall bear the signature and seal of a Registered Professional Engineer licensed in New York State.

- A. A statement of the reason for the new or modified Telecommunications Facility including the coverage and/or capacity justification, and a description of its compliance with Town, State, and Federal requirements and recommendations.
- B. A completed application form, including any required Disclosure Certification forms as adopted by the Town for the particular application.
- C. A completed Environmental Assessment Form, Part I in accordance with SEQRA regulations.
- D. Inventory of existing Wireless Telecommunications Facilities when a new site is proposed. An inventory of all existing like uses, or sites approved for like uses, that are located within one (1) mile, including specific information about the location of each Tower or DAS System, compiled from public records by the best efforts of the Applicant; the distance from the proposed new use as shown on the map or plan submitted with the Application; and the name of the owner/operator of each such use, as best as same can be ascertained. An inventory is not needed for Collocations or Modifications to existing sites.
- E. A certification of the suitability or unsuitability of existing Towers or other structures and installations in the inventory. This certification is not needed for Collocations or Modifications to existing sites.
- F. Application fee and Consultant Escrow deposit as established by the Town Board shall be paid by the Applicant.
- G. A site plan drawn to scale meeting all the requirements contained in this Chapter and the Town Subdivision and Site Plan Regulations, which shall include:
 - (1) The postal address and tax map parcel number of the property.
 - (2) The Zoning District in which the property is situated.

- (3) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.
 - (4) The location, size and height of all existing and proposed structures on the property which is the subject of the Application.
 - (5) The azimuth, size and center-line Height location of all proposed and existing Antennas on the supporting structure.
 - (6) The location of any proposed Towers, Antennas, equipment cabinets, and generators, and all related fixtures, structures, appurtenances, and apparatus, including a labeling of dimensions and setbacks, materials, colors, and lighting.
 - (7) Delineation of all distances between the proposed use and all adjoining residentially-zoned or residentially-utilized properties, and the distance between the nearest boundary line of any Sensitive Location and the facility at issue if the distance is five hundred (500) feet or less.
- H. A report verifying that the Wireless Telecommunication Facility will be in full compliance with the current FCC RF Emissions guidelines. This report shall show the anticipated radiofrequency emissions of the proposed Antenna installation combined with all existing Antennas on the site, in comparison to FCC guidelines at ground level and at same-Height exposure, if applicable, for general population standards.
- I. A statement containing the following information: (a) frequency, modulation and class of service of radio or other transmitting equipment; (b) actual intended transmission power stated as the maximum effective radiated power (ERP) in watts; (c) that an attached copy of the FCC license for the intended use of the Telecommunication Facilities is a true and complete copy; and (d) the number, type and model of the proposed Antenna(s) with a copy of the specification sheet.
- J. A certification that the proposed installation will not cause physical or RF interference with other Telecommunications devices.
- K. A photograph, photograph simulation, or architectural drawing to demonstrate the appearance of the proposed facility, from multiple angles and Heights for new Towers.
- L. A certification establishing that the use meets the standards and regulations of the FAA, the FCC, and any other state or federal agency having jurisdiction. The certification shall indicate whether the Application is subject to FAA Regulation Part 77 or successor regulation and whether it requires lighting. If an FAA determination

is required then all documentation filed in connection with the Application must be provided.

- M. The make, model, type, and manufacturer of the Tower (if proposed), along with any additional information required by Article III (Standards for Towers).
- N. Documentation that demonstrates and establishes compliance with Article II (Standards for Design and Placement). Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service, or existing sites that demonstrate a Gap in Service or Densification.
- O. The Applicant shall be required to submit a written report demonstrating its diligent efforts to secure shared use of existing Towers or the use of alternative buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the Application, along with any letters of rejection stating the reason for rejection.
- P. Any additional documents, studies and specifications requested by the Town during the review process.

§194-43. Reserved.

§194-44. Planning Board Site Plan Pre-Applications and Site Plan Applications on Private Lands. Applications for Wireless Telecommunications Facilities on private lands pursuant to §194-38(A) and §194-39(A) except for Eligible Facilities Requests shall include the following documentation. Where a certification is required, such certification shall bear the signature and seal of a Registered Professional Engineer licensed in New York State.

- A. A statement of the reason for the new or modified Telecommunications Facility including the coverage and/or capacity justification, and a description of its compliance with Town, State, and Federal requirements and recommendations.
- B. A completed application form, including any required Disclosure Certification forms as adopted by the Town for the particular application.
- C. Copies of the completed building permit applications that were submitted to the Department of Engineering Services for the proposed work simultaneously with the Planning Board Application.
- D. Inventory of existing Wireless Telecommunications Facilities when a new site is proposed. An inventory of all existing like uses, or sites approved for like uses, that are located within one (1) mile, including specific information about the location of each Tower or DAS system, compiled from public records by the best efforts of the Applicant; the distance from the proposed new use as shown on the map or plan

submitted with the Application; and the name of the owner/operator of each such use, as best as same can be ascertained. An inventory is not needed for Collocations or Modifications to existing sites.

E. A certification of the suitability or unsuitability of existing Towers or other structures and installations in the inventory. This certification is not needed for Collocations or Modifications to existing sites.

F. Application fee and Consultant Escrow deposit as established by the Town Board shall be paid by the Applicant.

G. Four copies of a site plan drawn to scale meeting all the requirements contained in the Town Code and the Town Subdivision and Site Plan Regulations, which shall include:

(1) The postal address and tax map parcel number of the property.

(2) The Zoning District in which the property is situated.

(3) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.

(4) The location, size and height of all existing and proposed structures on the property which is the subject of the Application.

(5) The azimuth, size and center-line Height location of all proposed and existing Antennas on the supporting structure.

(6) The location of any proposed Towers, Antennas, equipment cabinets, and generators, and all related fixtures, structures, appurtenances, and apparatus, including a labeling of dimensions and setbacks, materials, colors, and lighting.

(7) Delineation of all distances between the proposed use and all adjoining residentially-zoned or residentially-utilized properties, and the distance between the nearest boundary line of any private or public school property and the facility at issue if the distance is five hundred (500) feet or less.

H. Any additional documents, studies and specifications requested by the Town during the review process.

§194-45. Planning Board Site Plan Pre-Applications in Public Rights-of-Way and on Municipal Facilities and Municipal Property. Applications in Public Rights-of-Way and on Municipal Facilities and Municipal Property for Wireless Telecommunications Facilities pursuant to §194-38(A) and §194-39(A) except for Eligible Facilities Requests shall include the following documentation. No Application for new Antenna sites shall

contain more than twenty (20) locations. Where a certification is required, such certification shall bear the signature and seal of a Registered Professional Engineer licensed in New York State.

- A. A statement of the reason for the new or modified Telecommunications Facilities including the coverage and/or capacity justifications, and a description of their compliance with Town, State, and Federal requirements and recommendations.
- B. A completed application form, including any required Disclosure Certification forms as adopted by the Town for the particular application.
- C. A copy of the completed building permit applications that were submitted to the Department of Engineering Services for the proposed work simultaneously with the Planning Board Application, and a copy of the road opening permit applications that were simultaneously submitted to the Highway Department for all locations where ground disturbance is proposed in the Public Rights-of-Way.
- D. A completed Environmental Assessment Form, Part I in accordance with SEQRA regulations.
- E. Inventory of existing Wireless Telecommunications Facilities when a new site is proposed. An inventory of all existing like uses, or sites approved for like uses, that are located within one (1) mile, including specific information about the location of each Tower or DAS system, compiled from public records by the best efforts of the Applicant; the distance from the proposed new use as shown on the map or plan submitted with the Application; and the name of the owner/operator of each such use, as best as same can be ascertained. An inventory is not needed for Collocations or Modifications to existing sites.
- F. A certification of the suitability or unsuitability of existing Towers or other structures and installations in the inventory. This certification is not needed for Collocations or Modifications to existing sites.
- G. Application fee and Consultant Escrow deposit as established by the Town Board shall be paid by the Applicant.
- H. A report verifying that the Wireless Telecommunication Facilities will be in full compliance with the current FCC RF Emissions guidelines. This report shall show the anticipated radiofrequency emissions of the proposed Antenna installations combined with all existing Antennas on the sites, in comparison to FCC guidelines at ground level and at same-Height exposure, if applicable, for general population standards.
- I. A statement containing the following information: (a) frequency, modulation and class of service of radio or other transmitting equipment; (b) actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

- (c) that an attached copy of the FCC license for the intended use of the Telecommunication Facilities is a true and complete copy; and (d) the number, type and model of the proposed Antennas with a copy of the specification sheet.
- J. A certification that the proposed installations will not cause physical or RF interference with other Telecommunications devices.
- K. Two copies of a photograph, photograph simulation, or architectural drawing to demonstrate the location and appearance of the proposed facilities.
- L. Any additional documents, studies and specifications requested by the Town during the review process.
- §194-46 through §194-48. Reserved.

ARTICLE IX AUTHORITY OF THE REVIEWING BOARD

- §194-49. Authority of the Boards.
- A. The reviewing Board may require the Applicant to erect a structure at the Applicant's expense to house or screen the proposed Antenna and related equipment, as it deems necessary or desirable in accordance with the established guidelines in §194-10(G).
- B. The Town Board, Board of Trustees, or Zoning Board of Appeals, as the case may be, may reduce the Height of the proposed Tower, Antennas, or other Facilities and structures or make other Modifications to the proposed Wireless Telecommunication Facility for the purpose of making aesthetic improvements, even if it means that the Gap in Service or Densification is not fully remedied; substantial remediation of the Gap in Service or Densification shall be sufficient.
- C. The reviewing Board may refer an Application to other Town agencies or departments for recommendations on any issue it deems necessary and proper. Such referral shall specify the reasons for the referral.
- D. The reviewing Board may retain a Consultant(s) at the Applicant's expense to verify that the proposed Wireless Telecommunication Facility subject to this Chapter complies with the applicable limits for RF emissions, that the proposed facility is necessary to remedy a Gap in Service or Densification at a specified location, and to advise the Board on any technical aspect of the Application. The review of the Application may include a physical inspection of the site or facility.
- E. The reviewing Board may place special conditions or limitations on the approval of an application that include the following:
- (1) Location of principal and accessory structures.

- (2) Limitation on signs or advertising devices, including number, size, location, type, and illumination.
- (3) Limitation on amount, location, intensity, and direction of exterior illumination, including the imposition of stricter standards than those provided in Chapter 143.
- (4) Amount, location, and improvement of off-street parking and loading spaces.
- (5) Type, location, and design of drainage and drainage structures.
- (6) Control of access and circulation within the premises.
- (7) Grading and the location and type of retaining walls or structures.
- (8) Landscaping, screening, fencing, and walls, including the location and types of plantings and fencing required for screening purposes.
- (9) Structural changes.
- (10) Control or elimination of smoke, dust, gas, noise, vibration, odor, and lighting.
- (11) Other conditions found by the Board to be necessary.

§194-50. Retention of outside Consultant(s) and independent studies.

- A. As a condition of processing any matter over which it has jurisdiction, the reviewing Board may commission independent studies and retain a Consultant(s) at the Applicant's expense to verify that the proposed Wireless Telecommunication Facility complies with the applicable limits for RF emissions, that the proposed Facility is necessary to remedy a Gap in Service or Densification at specified location(s), and to advise the Board on any technical aspect of the Application, including, where applicable, services rendered in connection with the negotiation of a license, and the site plan pre-application process. The Applicant shall submit to the Department of Planning and Environment or other town department for deposit into a non-interest bearing trust and agency account maintained by the Town an amount established by the Town Board to be utilized by the Town to pay for such services during the review process. The Consultant shall provide the Applicant and the Department of Planning and Environment with copies of its monthly invoices for services rendered by e-mail transmission. In the event the sum on deposit has a balance of less than 20% of the amount initially deposited by the Applicant, the Applicant shall, upon notice from the Town, deposit additional amounts so that the balance on deposit reaches at least 50% of the amount initially deposited. No further action or review of the Application shall be conducted until such balance is reached. After all reasonable charges have been paid to the vendor(s) by the Town, any balance remaining on deposit in the account

shall be returned to the Applicant. In the event an Application is withdrawn at any stage by the Applicant, any unused portion of the sums on deposit shall be returned to the Applicant.

- B. In its discretion the reviewing Board may adopt or reject, in whole or in part, the findings and determinations of any Consultant or study commissioned by the Board or Applicant.

§194-51. Dispute Resolution. In the event the Applicant objects to the charges contained in an invoice, the Applicant shall have twenty (20) business days from receipt of the invoice or a request to replenish the Consultant Escrow to file a written Notice of Objection to the charge(s) addressed by e-mail to the Town Attorney and the Consultant. Said Notice of Objection shall identify, with specificity, the date on which the service(s) which the Applicant disputes were rendered; the type of service(s) rendered by the Consultant which the Applicant disputes, and the grounds upon which it contests either the necessity for such service(s) or that the time expended in performing the service(s) is excessive; and, the precise monetary amount by which the Applicant contends that the amount charged for the disputed service(s) exceeds the reasonable and necessary charges for the service(s) rendered. The Applicant may not raise an objection, however, that the hourly rate charged by the Consultant is *per se* unreasonable. The Applicant shall attach to the Notice of Objection a copy of the invoice upon which the disputed charge(s) appears. The Notice of Objection shall state that prior to the filing of the objection the Applicant and the Consultant have conferred in good faith in an effort to resolve the dispute or alternatively, the reason why they have been unable to do so. The Town Attorney shall have ten (10) business days from receipt of the Notice of Objection to refer the matter to an Administrative Hearing Officer selected by the Town Attorney, who may be an employee of the Town, to conduct the administrative hearing. If no objection is filed or if an objection is filed beyond the twenty (20) day period, the invoice or request to replenish the Consultant Escrow shall be paid in its entirety from the amount maintained on deposit or new funds provided by the Applicant.

§194-52. Notice of the Administrative Hearing. At least ten (10) business days prior to the administrative hearing, written notice of the date, time, and place of the hearing shall be provided by the Administrative Hearing Officer to the Consultant and to the Applicant at the address shown on the Application by regular or certified mail, return receipt requested, or by e-mail, at the option of the Administrative Hearing Officer.

§194-53. Administrative Proceedings.

A. Conduct of hearings.

- (1) Unless otherwise directed by the Administrative Hearing Officer, not less than three (3) days prior to the date set for the hearing, the Applicant and the Consultant shall submit to the Administrative Hearing Officer a written position statement as to why the fees charged by the Consultant should be disallowed, reduced, or sustained. Absent good cause shown, the written

statement shall not exceed five (5) pages, not including attachments. In support of their respective position statement, either party may submit affidavits or documentary evidence for consideration by the Administrative Hearing Officer. In his/her sole discretion, the Administrative Hearing Officer may permit the filing of reply statements or additional documentary evidence as may be necessary to render a determination of the objection. The administrative hearing may only be adjourned upon good cause shown at the discretion of the Administrative Hearing Officer.

- (2) The burden of proof shall be on the Applicant to establish that a particular service was unnecessary, or the time expended by the Consultant was excessive.
- (3) In the event deemed necessary to clarify the issues, the Administrative Hearing Officer may, in his/her sole discretion, direct that live testimony be presented either in support of or opposition to the objection. Any live testimony taken at the hearing shall be recorded.
- (4) At the request of either the Applicant or the Consultant, and with the consent of the other party, prior to rendering a report and recommendation as to the issues at the hearing, the Administrative Hearing Officer may act as mediator in an effort to assist the parties in reaching a negotiated resolution of the dispute. In the event that the parties are unable to reach a settlement of the dispute, the Administrative Hearing Officer's participation in the mediation shall not serve as a bar to his/her issuance of a report and recommendation as to the issues at the hearing.

B. Report and recommendation. The Administrative Hearing Officer shall consider the evidence, and shall, within ten (10) business days of the close of the hearing, submit his/her written findings and recommendations to the Town Attorney for ultimate determination, with a copy to the Planning Department. A copy of the Administrative Hearing Officer's findings and recommendation(s) shall be filed with the Huntington Town Clerk and served upon the Applicant by regular mail and/or certified mail, return receipt requested, or by e-mail to the address shown on the Application, and upon the Consultant within five (5) business days after a recommendation is issued.

§194-54. Interlocutory Decision and Replenishment of Consultant Escrow.

- A. The Town Attorney may adopt or reject, in whole or in part, any portion of the Administrative Hearing Officer's findings and recommendation(s) and shall submit his or her written interlocutory decision within ten (10) business days of receipt of same. A copy of the written interlocutory decision shall be provided to the Applicant and the Consultant in the same matter as the notice of hearing, and filed with the Huntington Town Clerk with a copy to the Planning Department within two (2) business days of the Town Attorney's finding.

- B. In the event that a Notice of Objection is filed by the Applicant, no monies, which are challenged in the administrative proceeding, shall be disbursed from the Consultant's Escrow established pursuant to §194-50, either in payment of the Consultant or as reimbursement to the Applicant, until the Town Attorney has issued and filed his/her written interlocutory decision from the Administrative Hearing Officer's report and recommendation.
- C. Interlocutory Decision and Replenishment of Escrow. Any decision of the Town Attorney which adopts, modifies or rejects the findings and recommendation(s) of the Administrative Hearing Officer from any challenge to the fees charged or services rendered by the Consultant shall not be deemed final, and the time in which to challenge said administrative decision pursuant to Article 78 of the Civil Practice Law and Rules shall not commence, until a certificate of completion closing out the application is issued, or the application has been discontinued or withdrawn. Notwithstanding any interlocutory decision which reduces the Consultant's fees, until a certificate of completion is issued concluding the application process, nothing set forth in this Article IX shall be deemed to relieve the Applicant of the duty to replenish the Consultant Escrow pursuant to §194-50(A).

§194-55 through §194-56. Reserved.

ARTICLE X POST-APPROVAL MONITORING

§194-57. Access to Wireless Telecommunications Facilities.

- A. Unauthorized Access. All Wireless Telecommunications Facilities shall be operated and maintained so as to prevent unauthorized access to and upon such facilities. Any owner or Person-in-charge of the property, an accessory facility or any Wireless Telecommunications Facility who commits an offense against the provisions of this section shall be deemed to be in violation of this Chapter.
- B. Continuing Compliance. The Town shall have access to Wireless Telecommunications Facilities upon notice of at least 48 hours for the purpose of verifying continuing compliance with this Chapter, the license agreements, if applicable, and all permits and approvals.

§194-58. Revocation or suspension of certificates, permits and other approvals.

- A. Existence of Violations. The Director of Public Safety or Director of Engineering Services shall report to the Town Attorney, on behalf of the Town Board, if the Facilities are on Municipal Property, Municipal Facilities, or using the Public Rights-of-Way, or to the Zoning Board, if the Facilities are on private property, that the Facilities, or any part thereof, are not in compliance with any permit or approval issued by the respective Board. The Director shall indicate that a Notice to Comply, Notice of Violation or summons, as the case may be, has been issued and there has

been no compliance, or compliance has not been achieved to the satisfaction of the Director. The Town Attorney may refer the matter to the attention of the Planning Board for consideration if the violation involves a Planning Board approval or condition.

- B. Special use permit and site plan approval. The Zoning Board of Appeals or Planning Board may, upon notice and after a public hearing, revoke any special use permit or site plan approval granted by the Board if the Board determines that there are substantial violations of a condition of approval, or of a map or plan, or special use permit, or variance, or if false documents or statements have been submitted in support of the Application, or if equipment is not functioning within expected parameters, or on such other grounds deemed appropriate by the Board.
- C. License agreement. The Town Board or Huntington Board of Trustees may terminate a license agreement the Board has approved, upon notice and after a public hearing, if the Board determines that a substantial violation of the license agreement, or of a map or plan, or of a special use permit, or variance, or of any condition established by the Board has occurred, or if false documents or statements have been submitted in support of the Application, or if equipment is not functioning within expected parameters or on such other grounds deemed appropriate by the Board.
- D. Certificate of occupancy, permit or other approval. The Director of Engineering Services may revoke or suspend a Certificate of Occupancy, permit or other approval for a Wireless Telecommunications Facility in accordance with the procedures set forth in Chapter 87 of the Town Code on the following grounds. The Town Board or Huntington Board of Trustees may revoke a Certificate of Occupancy, permit or other approval at the same time and in the same manner it terminates a license agreement on the grounds set forth in (C) herein.
 - (1) The Town Board, Huntington Board of Trustees, Zoning Board of Appeals, or Planning Board has revoked their approval of the Facility or any part thereof; or
 - (2) The FCC has revoked the license of the Telecommunications provider; or
 - (3) The Department receives sufficient evidence to show that the Wireless Telecommunications Facility is violating FCC RF emissions standards; or
 - (4) The Facility or elements of the Facility fall into such a state of disrepair that the condition jeopardizes the health, welfare and safety of Persons or property, or creates a nuisance or danger; or
 - (5) Upon the grounds set forth in Section 87-30 of the Town Code.
- E. Notice of hearing.

(1) If the applicable Board seeks action, written notice of the grounds for revocation of any certificate, permit, grant or other approval, and the date, time and place of a hearing before an Administrative Hearing Officer (on behalf of the Town Board) if the Facilities are on Municipal Property, Municipal Facilities, or using the Public Rights-of-Way, or the Zoning Board of Appeals if the Facilities are located on private property, as the case may be, shall be mailed to the private property owner; the Applicant who filed for the use or installation or owner or operator of the facility, system, or equipment; and their attorney, if known, to their last known address, by regular and certified mail, return receipt, requested at least fifteen (15) calendar days before the hearing. If a violation of site plan approval or a Planning Board condition, or other violation involving the Planning Board is at issue the same procedure shall be followed by the Planning Board.

(2) The notice shall also contain a statement that they are (a) entitled to be represented by legal counsel at the hearing; (b) they will be provided with an opportunity to be heard and may present the testimony of witnesses, experts, and other evidence in their own behalf; and (c) that upon their failure to appear at the hearing, then in such event, the determination of the Board shall be final.

F. Hearing. All hearings shall be recorded, and may be adjourned only upon good cause shown and at the discretion of the Person or entity holding the hearing.

(1) Authority. At the hearing the Hearing Officer, Planning Board or Zoning Board shall consider the evidence, and may adopt or reject, in whole or in part, any portion of the Director's report, with or without conditions, as deemed advisable or necessary under the circumstances.

(2) Zoning Board. Upon a finding that the use or Facilities is in violation of its approval, the Board may order the property owner, and/or the Applicant, operator and/or owner of the system or Facility to repair, remediate, rectify, demolish or remove any part of the Telecommunications Facilities in violation, within the time specified, and upon the failure, neglect, or refusal of such Person(s) to comply, may revoke its approval, in whole or in part. The decision of the Board is final as to the Town of Huntington. The decision shall be mailed to the entity who requested the hearing or his attorney, if known, and the property owner, and filed in the office of the Huntington Town Clerk.

(3) Planning Board. Upon a finding that the use or Facilities is in violation of its approval, the Board may revoke its approval, in whole or in part. The decision of the Board is final as to the Town of Huntington. The decision shall be mailed to the entity who requested the hearing or his attorney, if known, and the property owner, and filed in the office of the Huntington Town Clerk.

- (4) Administrative Hearing Officer. The Administrative Hearing Officer's findings and recommendations shall be filed with the Town Clerk and mailed to those who requested the hearing or their attorney(s), if known. The Town Clerk shall forward the recommendations of the Administrative Hearing Officer to the Town Attorney, and to the Town Board for ultimate determination. The Town Board shall consider the evidence, and may adopt or reject, in whole or in part, any portion of the Hearing Officer's report, with or without conditions, as deemed necessary by the Board. Upon a finding that the use or Facilities are in violation of any approval or agreement, the Board may order the Applicant, operator, and/or owner of the Facilities, or any part thereof, to abate, rectify or remediate the violation, or to demolish and remove any part of the Wireless Telecommunications Facilities and restore the site to its original condition within the time specified, and upon the failure, neglect, or refusal of such Person(s) to comply, may authorize the code officer or other Town personnel, upon reasonable notice, to enter the premises and demolish and remove the same, and restore the site. The decision of the Board is final as to the Town of Huntington. The decision shall be mailed to the entity who requested the hearing or their attorney, if known, and filed in the office of the Huntington Town Clerk.
- G. Grounds for a default. If there has been no appearance at the hearing by the named recipients, the resulting determination of the Board shall be final and shall be served in the same manner as the Notice of Hearing. Once revoked, the use and its accessory uses or the specific approval, as is applicable, shall not be reestablished until all violation(s) are corrected to the satisfaction of the Town. Reestablishment of a grant will require a new Application to the applicable Board and, at the discretion of the Board, a public hearing.
- H. Liability for costs. The private property owner, Applicant, or owner or operator of the Facility shall be jointly and severally liable for the payment of all costs and expenses the Town incurs for the abatement, repair, or removal of the Facilities and restoration of the site, if applicable, including legal fees and costs.
- I. Recovery of costs. The costs incurred by the Town shall be certified by the Director of each Town department providing services and the Town Attorney shall mail written notice of such costs by both regular mail and certified or registered mail, return receipt requested, to the property owner, Applicant, and owner or operator of the Facility, as the case may be. The notice shall state that upon the failure to pay the amount certified within ten (10) calendar days of receipt of the notice by money order, or certified or bank check the amount will be added to the tax bill if permitted by law, or other action will be taken without further notice. Nothing contained herein shall be construed to limit the Town's remedies or bar the commencement of an action to collect the debt in lieu of a tax lien.
- J. Tax lien. In the event the debt is not paid within the ten (10) day period, or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed to the last known address,

such certification of costs shall be provided to the Tax Receiver, who shall cause the costs as shown thereon to be charged against such lands and/or facilities (if permitted by law) without further notice. The amount so charged shall forthwith become a lien against such lands and/or facilities, and shall be added to and become part of the taxes next to be assessed and levied, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officer(s) and in the same manner as taxes.

§194-59. Violation. Any owner or Person-in-charge of property, an accessory facility or any Wireless Telecommunications Facility who fails or neglects to abide by a revocation or suspension order, or a termination of the license agreement shall be deemed to be in violation of this Chapter.

§194-60 through §194-62. Reserved.

ARTICLE XI ABANDONMENT OF FACILITIES

§194-63. Abandonment. It shall be a rebuttable presumption that any such Wireless Telecommunications Facility that has not been in operation or use for more than ninety (90) continuous days or a total of one hundred-eighty (180) days in any three hundred sixty-five (365) day period shall be deemed abandoned, and the private property owner, Applicant who filed for the use or installation of the system or equipment, and the operator or owner of the system or equipment shall be responsible for removal of all structures and facilities within one hundred twenty (120) days of the date of the notice of the Director of Public Safety, or his designee, declaring the Wireless Telecommunications Facility and/or use abandoned and directing removal, and upon failure to do so the Town may take such action at the expense of the property owner, Applicant, and the operator or owner of the system or equipment, as follows:

A. Notice. Written notice of the determination that the facility, system or equipment is not in operation, and the equipment and/or use has been deemed abandoned and must be removed within one hundred and twenty (120) calendar days of the date on the notice shall be mailed by the Department of Public Safety to the private property owner, the Applicant who filed for the use or installation, and owner and/or operator of the facility, system, or equipment, if known, to their last known address, by regular and certified mail, return receipt, requested. The notice shall also advise the recipient that they are entitled to a hearing on that determination before an Administrative Hearing Officer (on behalf of the Town Board) if the facility is on municipal property, municipal facilities, or using the public right-of-way, or the Zoning Board of Appeals if the facility is on private property, as the case may be, provided that written request for such a hearing is received by the Department of Public Safety within fifteen (15) calendar days of the date on the notice. If a timely request has been filed, written notice of the date, place, and time of the hearing shall be mailed to the Person(s) who have requested a hearing, or to their attorney(s), if known, along with a statement that they (a) are entitled to be represented by legal counsel at the hearing;

(b) they will be provided with an opportunity to be heard and may present the testimony of witnesses, experts, and other evidence in their own behalf; and (c) that upon their failure to appear at the hearing, then in such event, the determination of the Town shall be final.

B. Amendment, modification, or withdrawal. The code enforcement officer may amend or modify any notice issued if, in his judgment, the circumstances warrant such action provided the amended or modified notice is clearly marked as such and is served as provided in (A) herein within ten (10) calendar days of service of the original notice, and a hearing has not occurred. A notice may be withdrawn at any time.

C. Hearing. All hearings shall be recorded, and may be adjourned only upon good cause shown and at the discretion of the Person or entity holding the hearing.

(1) At the hearing the Hearing Officer or Zoning Board shall consider the evidence, and may adopt or reject, in whole or in part, any portion of the code officer's determination, with or without conditions, as deemed advisable or necessary under the circumstances.

(2) Zoning Board. Upon a finding that the use or equipment has been abandoned, the Board may order the property owner, and/or the Applicant, operator and/or owner of the facility or equipment to demolish and remove the Telecommunications Facilities and restore the site within the time specified, and upon the failure, neglect, or refusal of such Person(s) to comply, may authorize the code officer or other town personnel, upon reasonable notice, to enter the premises and demolish and remove the same, and restore the site. The decision of the Board is final as to the Town of Huntington. The decision shall be mailed to the entity who requested the hearing or his attorney, if known, and filed in the office of the Huntington Town Clerk.

(3) Hearing Officer. The Hearing Officer's findings and recommendations shall be filed with the Town Clerk and mailed to those who requested the hearing or their attorney(s), if known. The Town Clerk shall forward the recommendations of the Hearing Officer to the Town Board for ultimate determination. The Town Board shall consider the evidence, and may adopt or reject, in whole or in part, any portion of the Hearing Officer's report, with or without conditions, as deemed necessary by the Board. Upon a finding that the use or equipment has been abandoned, the Board may order the Applicant, operator, and/or owner of the facility or equipment to demolish and remove the Wireless Telecommunications Facilities and restore the site within the time specified, and upon the failure, neglect, or refusal of such Person(s) to comply, may authorize the code officer or other town personnel, upon reasonable notice, to enter the premises and demolish and remove the same, and restore the site. The decision of the Board is final as to the Town of Huntington. The decision shall be mailed to the entity who requested the

hearing or his attorney, if known, and filed in the office of the Huntington Town Clerk.

- D. Compliance. A property owner, Applicant, operator, or owner of a facility who wishes to comply with the notice of abandonment and order to remove shall notify the Director of Public Safety in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations, including demolition permits from the Building Department. Upon completion of the removal process, the site shall be restored to its original condition at the expense of the private property owner, Applicant, operator, or owner of the facility.
- E. Grounds for a default. The notice shall automatically become a final order if there has been no request for a hearing within the period specified, or, if having requested a hearing, there has been no appearance at the hearing by the Person who had requested it. The resulting order shall be served in the same manner as the original notice. Such Facilities shall be removed and the location restored to its original condition by the property owner, Applicant, and owner and operator of the facility or equipment, at their own cost and expense, within one hundred and twenty (120) calendar days of the date of the notice declaring the abandonment. In the event of a default, the Town is authorized, upon reasonable notice, to enter the premises and demolish and remove the same, and restore the site.
- F. Liability for costs. All facilities or equipment not removed within the required period shall be in violation of this chapter. In the event the Town removes abandoned equipment or facilities upon the failure of the private property owner, Applicant, operator, or facility owner to timely do so, then the private property owner, Applicant, operator, and facility owner shall be jointly and severally liable for the payment of all costs and expenses the Town incurs for the removal of the facilities and restoration of the site, if applicable, including legal fees and costs.
- G. Recovery of costs. The costs incurred by the Town shall be certified by the director of each town department providing services and the Town Attorney shall mail written notice of such costs by both regular mail and certified or registered mail, return receipt requested, to the property owner, Applicant, owner, or operator of the facility, as the case may be. The notice shall state that upon the failure to pay the amount certified within ten (10) days of receipt of the notice by money order, or certified or bank check the amount will be added to the tax bill or other action will be taken without further notice. Nothing contained herein shall be construed to limit the Town's remedies or bar the commencement of an action to collect the debt in lieu of a tax lien.
- H. Tax lien. In the event the debt is not paid within the ten (10) day period, or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed to the last known address, such certification of costs shall be provided to the Tax Receiver, who shall cause the costs as shown thereon to be charged against such lands and/or facilities without

further notice. The amount so charged shall forthwith become a lien against such lands and/or facilities, and shall be added to and become part of the taxes next to be assessed and levied, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officer(s) and in the same manner as taxes.

§194-64 through §194-66. Reserved.

ARTICLE XII ADMINISTRATION AND ENFORCEMENT

§194-67. Notice to Comply. Whenever the Director of Engineering Services, the Director of Public Safety, or their designees, is satisfied that a Telecommunication Facility, an accessory thereof, is being erected, constructed, installed, modified, renovated, altered or repaired, or that activity is occurring at the site in violation of this Chapter or other applicable law, rule, order or regulation, or in violation of a grant, approval, map or plan issued or approved by an officer, board, department or agency of the Town, he or she may order compliance by written notice to comply to the property owner or Person-in-charge of the property, the Applicant who filed for the use or installation, the owner and/or operator of the Facility, system, or equipment, and/or Person committing the offense. The notice to comply shall identify the violation or offense and may, without limitation, require the abatement, remediation or restoration of the Telecommunications Facility, building, structure, or property, within the period identified in the notice. Such notice shall be deemed to be properly served if a copy is personally delivered to the owner, Person-in-charge, Applicant, operator, or Person committing the offense; or by posting a copy of the notice to comply in a conspicuous place on the property or Facility and mailing a copy by regular and registered or certified mail, return receipt requested, within two (2) business days of its posting to the property owner, Person-in-charge, Applicant, operator, or Person committing the offense at their last known address, or by such other method authorized by the laws of the State of New York.

§194-68. Stop-work orders.

- A. The Director of Engineering Services and/or the Director of Public Safety, or their designees may, in their sole discretion, order the work or installation being performed on any property, building or structure, a Telecommunication Facility, or an accessory thereof, suspended forthwith if he or she has reasonable grounds to believe that the work or installation is being performed in an unsafe and/or dangerous manner; or the work is not in conformity with the building permit application, plans and/or specifications approved by the Department; or with a map, plan, permit, grant or agreement approved by the Town, its officers and/or Boards; or the work is in violation of the Code of the Town of Huntington, the Building Code of the State of New York and/or other applicable law, ordinance, rule or regulation; or jeopardizes the health, welfare or safety of the public or surrounding community; or is injurious to Town property or the property of others.

- B. The stop-work order shall be in writing and shall state the conditions under which the work may be resumed. The property owner or Person-in-charge of the property, the Applicant who filed for the use or installation, the owner and/or operator of the Facility, system, or equipment, and/or Person committing the offense shall be provided with a copy of the stop-work order by delivering same to him or her in person, or to their agent or Person in charge of the property or work; or by posting the stop-work order in a conspicuous place on the property and mailing a copy of the stop work order by regular and registered or certified mail, return receipt requested, within two business days of its posting to the property owner, Person-in-charge, Applicant, operator of the Facility, or Person committing the offense at their last known address.
- C. Violation. It shall be unlawful for any Person to remove, alter, obscure, deface, change or otherwise tamper with any portion of a stop-work order that has been posted by the Town.
- D. Suspension of work. Upon the issuance of a stop-work order, all activities shall be immediately suspended until the stop-work order is rescinded. Notwithstanding the issuance of a stop-work order, the Director of Engineering Services and/or the Director of Public Safety, or their designees, may, in their sole discretion, permit any part of the work to continue if, in his or her judgment, same is necessary to protect the health and safety of Persons; or to preserve and safeguard the premises or any portion of the building, structure or Facility located therein; or to protect the surrounding community or Town property or the property of others. Such officials may also require the property owner or Person-in-charge of the property, the Applicant who filed for the use or installation, the owner and/or operator of the Facility, system, or equipment, and/or Person committing the offense to take such temporary action as is deemed necessary by the Town to protect the site or the welfare and safety of Persons or property pending resolution of the stop-work order. It shall be unlawful and a violation of this section for any Person to perform any work or other activity in violation of a stop-work order issued by the Town; or to deviate in any way from the work or activity permitted by the Town pending resolution of the stop-work order; or to disobey a lawful order of the Town. In addition to any other penalty provided for herein, any permit or approval issued may be revoked by the Town.

§194-69 through §194-70. Reserved.

§194-71. Penalties for Violations.

- A. Any property owner, Person in charge of the premises, Applicant, owner or operator of the Wireless Telecommunication Facility or any part thereof, who violates any provision of this Chapter, shall upon conviction thereof be guilty of an offense, punishable by a fine of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars for a conviction of a first offense; upon conviction of a second offense where the violation is committed within a period of five (5) years of the first conviction, a fine of not less than two thousand (\$2,000) dollars nor more than ten thousand (\$10,000) dollars; and upon conviction of a third or subsequent

offense where the violation is committed within a period of five (5) years of the second convictions a fine of not less than four thousand (\$4,000) dollars nor more than fifteen thousand (\$15,000) dollars. Each day, or part thereof, such violation continues shall constitute a separate offense punishable in like manner.

- B. Any property owner, Person in charge of the premises, Applicant, owner or operator of the Wireless Telecommunication Facility or part thereof, found by the Bureau of Administrative Adjudication to have violated any provision of this Chapter shall likewise be subject to a monetary penalty in an amount within the range of fines authorized in subdivision A for a first offense, subsequent offenses and continuing offenses.
- C. In addition to the penalties set forth herein or in other applicable law, rule or regulation, the Town Attorney is authorized to pursue, in a court of competent jurisdiction, civil and equitable relief, including but not limited to compensatory actions; civil penalties in the amount of up to five hundred (\$500) dollars per day, or any part thereof; an action to compel compliance with or to restrain by injunction the violation of this Chapter; and other remedies which in the opinion of the Town Attorney may seem necessary and proper. Any civil monetary penalty awarded may be added to the tax bill of the property where the violation has occurred and shall be collected in the same manner.
- D. In addition to the penalties set forth herein or in other applicable law, rule or regulation and without limitation, a violation of this Chapter may subject the permit holder to the revocation or suspension of its permit, as provided in this Chapter.
- E. No oversight or dereliction of duty on the part of the Town shall serve to legalize the maintenance, erection, construction, alteration, Modification, replacement or removal of a Telecommunication Facility, or to legalize the use and/or occupancy of any property, building or structure for the operation of any Telecommunication Facility, if the work or activity is conducted in violation of this Chapter or other applicable local, state and/or federal law, rule, ordinance or regulation.

Section 2. Severability.

If any clause, sentence, paragraph, subdivision, section or other part of this local law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this local law, and it shall be construed to have been the legislative intent to enact this local law without such unconstitutional or invalid parts therein.

Section 3. Effective Date.

This Local Law shall take effect upon filing in the Office of the Secretary of State of the State of New York, but shall not be effective as against Wireless Telecommunications Facilities until May 3, 2021.

ADDITIONS ARE INDICATED BY UNDERLINE.

* * * INDICATES NO CHANGE IN PRESENT TEXT.

DELETIONS ARE INDICATED BY [BRACKETS].

VOTE: AYES: 5 NOES: 0 ABSTENTIONS: 0

Supervisor Chad A. Lupinacci	AYE
Councilwoman Joan A. Cergol	AYE
Councilman Eugene Cook	AYE
Councilman Mark A. Cuthbertson	AYE
Councilman Edmund J. Smyth	AYE

THE RESOLUTION WAS THEREUPON DECLARED DULY ADOPTED